In The

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1973

No. 73-741

THE FIFTH AVENUE PEACE PARADE COMMITTEE, an unincorporated association and DEBORAH D. WEISBURD and ROBERT H. SILK, Individually and on behalf of all other Persons similarly situated,

Petitioners,

vs.

CLARENCE M. KELLEY, Director of the Federal Bureau of Investigation, JOHN F. MALONE, Assistant Director in Charge of the Federal Bureau of Investigation in New York City and THE AMALGAMATED BANK OF NEW YORK,

Respondents.

BRIEF FOR RESPONDENT THE AMALGAMATED BANK OF NEW YORK IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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STATEMENT

Respondent The Amalgamated Bank of New York (the "Bank") took no position below with respect to any of the issues raised as between petitioners and respondents Kelley and Malone. Similarly, the Bank takes no position with respect to any of the issues raised in the Petition for Certiorari as between petitioners and respondents Kelley and Malone.

Statement

Issues involving the Bank were litigated in the District Court and resolved in the Bank's favor. Such issues were not raised in the Court of Appeals and are not raised or referred to in the Petition for Certiorari. Thus, the Bank contends that there is no basis for the issuance of a Writ of Certiorari with respect to any issues involving it. The Bank respectfully submits to the Court herewith, as Appendix A, a copy of the five-page Brief submitted by it to the United States Court of Appeals for the Second Circuit, which concisely sets forth the Bank's position with respect to the matters herein.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

THE FIFTH AVENUE PEACE PARADE COMMITTEE, an unincorporated association and DEBORAH D. WEISBURD and ROBERT H. SILK, individually and on behalf of all other persons similarly situated,

Plaintiffs-Appellants,

-against-

L. PATRICK GRAY 3rd, Acting Director of the Federal Bureau of Investigation, JOHN F. MALONE, as Assistant Director in charge of the Federal Bureau of Investigation in New York City, and THE AMALGAMATED BANK OF NEW YORK,

Defendants-Appellees.

BRIEF FOR DEFENDANT-APPELLEE THE AMALGAMATED BANK OF NEW YORK

Statement of the Case

As the litigation below developed, the role of defendant-appellee THE AMALGAMATED BANK OF NEW YORK (the "Bank"), proved to be extremely limited. And, for the reasons set forth below, it is neither necessary nor appropriate for the Bank to take any part in the arguments on appeal.

Appendix A

The claim asserted against the Bank, as set forth in the Complaint (A8) arose out of the undisputed facts that the plaintiff THE FIFTH AVENUE PEACE PARADE COMMITTEE (the "Committee") (i) had opened an account with the Bank under the name of "Washington Transportation Fund", (ii) had solicited and received payments from many individuals for bus tickets for transportation to the demonstration held in Washington, D.C. on November 14-16, 1969, (iii) had deposited these payments (most of which were personal checks) into the Washington Transportation Fund account, and (iv) had drawn its own checks on the account to pay for the chartering of buses from the Allied Bus Corp. The essence of the Committee's claim against the Bank, as alleged in the Complaint, was as follows:

> "9. Upon information and belief, at various times during October and November, 1969, agents of the FBI visited the Bank and examined the records maintained by the Bank concerning the Account (the "Bank Records").
>
> 10. Upon information and belief, said agents reproduced the Checks and the Bank Records by photographic, electrostatic or other photocopy reproduction methods.
>
> 11. Upon information and belief, agents of the FBI compiled, by their examination of the Bank Records, a list of names of those persons who had purchased Moratorium Day Tickets by paying for such tickets with personal checks (i.e., the Individual Plaintiffs and the members of the Class)."

Appendix A

The Complaint further alleged that the FBI's copying of checks at the Bank and compiling of a list of contributors to the Washington Transportation Fund was unlawful and in violation of plaintiffs' constitutional rights.

The Bank has at all times denied the specific allegations relating to it contained in paragraphs 9, 10 and 11 of the Complaint, has denied that the individual checks deposited in the Washington Transportation Fund were copied or in any way listed by or for the FBI or any other government agency, has denied that any list of contributors to the Washington Transportation Fund was complied by, from or with the assistance of, records of the Bank, and has denied that it did anything that was unlawful or was in violation of plaintiffs' constitutional rights.

As it turned out, the allegations of paragraphs 9, 10 and 11 of the Complaint were untrue and utterly unfounded and the Bank's denial thereof was correct. In fact, it was apparent by the time of trial that, while plaintiffs had refused to withdraw the allegations made against the Bank, they had shifted the primary emphasis of their case to a new theory -- that the entire governmental investigation was illegal and unconstitutional irrespective of what had happened at the Bank (See, *e.g.*, Pre-Trial Order, A146-150). Accordingly, almost all of the evidence and argument at the trial was devoted to other issues in which the Bank was not involved.

Appendix A

The only evidence offered by plaintiffs with respect to the allegations made against the Bank was testimony of FBI Agent Anthony Constantino to the effect that he had been assigned to locate the bank account of the Committee, ultimately located the account at the Amalgamated Bank, spent about 15 minutes there (A267), and was given "the name of the account, the address, the individuals connected with the account and probably the signature cards for the account" (A242). He did not photostat or copy checks or compile any list of checks or contributors (A266). He made no further inquiry about the account and believed that no other agent did so either (A261). All of the information he obtained was listed in his concise one-page report (Exh. 2). The only aspect of the investigation that included the Bank in any way was this brief fifteen minute inquiry.

At the close of the plaintiffs' case, the District Judge found that there was no evidence whatsoever to support the allegations of paragraphs 9, 10 and 11 of the Complaint and that the sole investigation at the Bank was as testified to by Agent Constantino. He ruled that nothing unlawful or in violation of plaintiffs' constitutional rights was done by the Bank. He, therefore dismissed the case as against the Bank (A403-411).*

Neither Questions Presented nor the Argument in the brief filed by plaintiffs on this Appeal in any way attack

* The Appendix does not contain the full transcript of this portion of the proceedings, and the Court may wish to refer to the transcript of the proceedings of January 21, 1971, as contained in the Record on Appeal, pp. 417-459, and particularly pp. 425-26 and 446-47.

the District Court's finding of fact with respect to the scope of the investigation actually conducted at the Bank or its ruling dismissing the case as against the Bank. Accordingly, it is clear that such finding and ruling, which were unquestionably correct, are not really at issue on Appeal and should be affirmed.

CONCLUSION

The District Court's finding of fact with respect to the scope of the investigation conducted at The Amalgamated Bank of New York and its ruling dismissing the complaint as against the Bank were correct and should be affirmed.

Respectfully submitted,

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